vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5493 OF 1996

Sciaky Wire Cut Pvt. Ltd. Co. & Ors. ... Petitioners

V/s.

Sudhir Vishnu Dhotre & Ors. ... Respondents

Mr.A.G. Damle for Petitioners
Mr.N.A. Kulkarni for Respondent No.1

a/w

WRIT PETITION NO.5491 OF 1996

Sudhir Vishnu Dhotre ... Petitioner

V/s.

Sciaky Wire Cut Pvt. Ltd. Co. & Ors. ... Respondents

Mr.N.A. Kulkarni for Petitioner
Mr.A.G. Damle for Respondent Nos.1 to 4

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 12, 2007**

JUDGMENT:

. Writ Petition No.5493 of 1996 has been filed by the employer in which the order of the Industrial Court dated 9.8.1996 in revision application (ULP) No.49 of 1996 is challenged to the extent that it remands the complaint (ULP) No.54 of 1996 to the Labour Court for hearing. Writ petition No.5491 of 1996 has been filed by the employee in which the order of the Industrial Court in Revision has been challenged. The issue involved in both these petitions is whether the employee

is a workman as defined u/s 3(5) of the MRTU & PULP Act r/w 2(s) of the Industrial Disputes Act. The Labour Court has held that the complaint is maintainable since the employee is a workman. The Industrial Court on the other hand while exercising powers u/s 44 of the MRTU & PULP Act has reappreciated the evidence and held that the employee is not a workman. While doing so, he has considered several documents which were not produced before the Labour Court. After concluding that the employee is not a workman, the Industrial Court remanded the complaint to allow the parties to adduce fresh evidence on all points including the preliminary points framed by the Labour Court. It is this order of the Industrial Court which is under challenge in both the petitions.

2. The employer is a private limited company running a small scale industry. There are about 10 to 12 shareholders of the Company. On 22.9.1986, the employee and three other persons were appointed Directors of the Company. This fact is not disputed by the employee. According to the employee although he was appointed as a Director and was also a shareholder of the company he was appointed as a machine operator for the C.N.C.machine on a monthly salary of Rs.1,000/- by the Company. He was trained to work on that machine and continued to report for work in shifts. The employer

found that the employee had entered into a Memorandum of Understanding with other concerns which were the employer's competitors thereby prejudicing the interests of the company as he was divulging trade secrets to these companies. This was discovered in July 1995. When the employee learnt of the proposal of the Board of Directors of the company to remove him as a director he submitted a representation against the proposal. According to the company, this representation was prejudicial to the interests of the company as the employee had sent copies to various authorities, including the Registrar of Companies and customers. At a meeting held on 14.8.1995, the Board of Directors resolved to remove the employee as the Director with immediate effect. The company claims that on 14.10.1995, the employee submitted an affidavit to it admitting his mistakes and accepting his removal from the Board of Directors.

3. On 6.4.1996, the employee filed a complaint under Items 1(a), (b) and (f) of Schedule IV of the MRTU & PULP Act. It was pleaded therein that the employee had been wrongly removed from service without following the due process of law. The company filed its written statement contending that the Labour Court had no jurisdiction to try the complaint as the employee was not a workman defined u/s 3(5) of the MRTU & PULP Act

r/w section 2(s) of the Industrial Disputes Act. Evidence was led by both the parties on this issue as it was tried as preliminary issues. The Labour Court on appreciating the evidence led before it concluded that the employee was a workman under the provisions of the MRTU & PULP Act r/w Industrial Disputes Act. By way of interim relief, the Labour Court directed the company to allow the employee to report for duty as a C.N.C. operator.

4. Aggrieved by this decision of the Labour Court the company preferred a revision application. The Industrial Court reversed the findings of the Labour Court and concluded that the employee was not a workman under the provisions of law. The Industrial Court remanded the matter to the Labour Court, permitting the parties to lead evidence afresh and with a direction to decide all issues together.

5. The decision of the Industrial Court to remand the complaint to the Labour Court after concluding that the employee is not a workman is incorrect. The Industrial Court had observed in para 25 that several documents were brought on record before it which were not produced by the parties before the Labour Court when the preliminary issue was decided. The Industrial Court observed that such documents could not be read in

evidence "as technically and legally they are not proved". According to the Industrial Court all these documents threw light on the status of the employee and, therefore, these documents would have to be considered for proper adjudication of the dispute. Despite coming to this conclusion that the Industrial Court went on to conclude that the employee was working as a Director of the Company and in addition he was casually working some times on the C.N.C. machine; that by itself did not confer upon him the status of the workman. The Industrial Court came to the conclusion that the findings of the Labour Court were perverse. It then remanded the complaint and directed the Labour Court to permit the parties to adduce further evidence on all issues including the preliminary issue. This procedure adopted by the Industrial Court is wholly incorrect. If the Industrial Court was of the view that the evidence brought forth by the parties before it was necessary to be relied on before deciding the issue as to whether the employee was a workman, it should have remanded the matter at that stage and allowed the parties to lead evidence to prove the documents brought on record before the Industrial Court. It could not have while doing so held, that the employee was not a workman. If the Industrial Court wanted to maintain its decision that the employee was not a workman then there was no question of remanding the complaint for any further

decision from the Labour Court. The complaint itself could not be maintainable if the employee was not a workman. The entire procedure therefore, adopted by the Industrial Court is erroneous. The jurisdiction of the Industrial Court u/s 44 is limited and the Industrial Court while exercising this jurisdiction cannot sit in appeal over the decision of the Labour Court. The jurisdiction that the Industrial Court exercises u/s 44 is akin to the exercise of jurisdiction by this Court under Article 227 of the Constitution of India. Therefore, the Industrial Court would only be required to ascertain whether the findings were perverse or there was some error of law apparent on the face of the record which required interference in its revisional jurisdiction. I am fortified in this view by several judgements of this Court including the Division Bench judgment in *Vitthal Gatlu Marathe v/s. Maharashtra State Road Transport Corporation & Ors.*, **1995 I CLR 854**; *Sadanand Ramesh Samsi v/s. Kirloskar Cummins Ltd. & Ors.,* **2002(4) Mh.L.J.12** and *MSRTC v/s. Ganpatrao Gyanba,* **2000 II CLR 865.**

6. In the present case, a perusal of the order of the Industrial Court indicates that it has reappreciated the evidence on record and concluded that the employee is not a workman. The Industrial Court has considered the evidence led before the Labour Court. While doing

so, the Industrial Court though aware of the limits of its jurisdiction u/s 44, has reappreciated the evidence and held that the employee was not connected with the employer in a dual capacity, that of a workman and a Director. The Industrial Court did not accept the case of the employee that he was appointed as a machine operator though a full time operator. The order of the Industrial Court is therefore set aside to the extent that it holds that the employee is not a ‘workman’.

7. The Labour Court on the basis of the evidence before it has concluded that the employee was a workman. The Labour court while doing so, has appreciated the evidence on record and has found that the dominant nature of work that the employee was performing was as a ‘workman’. Although it was accepted that the employee was a Director, the Labour Court found that the documents produced by the employer only indicated the removal as a Director. The other documents show that he was a shareholder at the same time he was working on the C.N.C. machine. The Labour Court has accepted the oral evidence led on behalf of the employee. The witness of the employer as admitted that the employee was trained to work on the C.N.C. machine and that he was working on the machine. The Labour Court also observed that the employee had no supervisory or administrative powers.

8. However, it must be noted that certain documents which have been produced before the Industrial Court were not produced before the Labour Court. The Industrial Court has observed that these documents throw light on the status of of the employee as to whether he was a workman employed with the company. In these circumstances, I am of the view that it would be in the interests of justice to set aside the order of the Labour Court as well and to remand the complaint to the Labour Court to decide afresh as to whether the employee is a ‘workman’. The Labour Court will decide this issue on the basis of the evidence already on record and any further evidence which the parties may want to adduce. The Labour Court will decide this issue as well as all other issues arising in the complaint at the same time. Since the complaint is of the year 1996, the Labour Court is directed to hear and dispose of the complaint as expeditiously as possible and in any event, before 31.12.2007.

9. Writ Petitions are disposed of accordingly